

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|--|---|--|
| Investigator: Ariel Courage | Team: Squad #6 | CCRB Case #: 201601576 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Friday, 02/19/2016 10:25 PM | Location of Incident: In the vicinity of 41-02 10th Street | Precinct: 114 | 18 Mo. SOL 8/19/2017 | EO SOL 8/19/2017 | |
| Date/Time CV Reported Sun, 02/21/2016 11:34 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Fri, 02/26/2016 11:06 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|----------------------|--------|--------|---------|
| 1. SGT Joseph Albert | 00350 | 905669 | 114 PCT |
| 2. POM David Hyman | 27151 | 950608 | 114 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Joseph Montano | 17686 | 950902 | 114 PCT |
| 2. POM Philip Smith | 27292 | 948429 | 114 PCT |
| 3. POM Sean Oneill | 17760 | 950984 | 114 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.SGT Joseph Albert | Force: Sgt. Joseph Albert used physical force against § 87(2)(b) | |
| B.SGT Joseph Albert | Discourtesy: Sgt. Joseph Albert spoke discourteously to § 87(2)(b) | |
| C.SGT Joseph Albert | Abuse: Sgt. Joseph Albert refused to provide his shield number to § 87(2)(b) | |
| § 87(4-b), § 87(2)(g) | | |

Case Summary

On February 21, 2016, § 87(2)(b) filed this complaint after calling 911 and being forwarded to IAB (BR 01). On February 26, 2016, this complaint was received at the CCRB.

On February 19, 2016, at 10:25 p.m., in the vicinity of 41-02 10th Street in Queens, § 87(2)(b) was walking with his friend, § 87(2)(b) and allowed him to borrow his cell phone. § 87(2)(b) was then approached by two officers of the 114th Precinct, identified by the investigation as Sgt. Joseph Albert, PO David Hyman, and PO Phillip Smith, who knew him to be wanted in connection with a robbery investigation. Additional officers of the 114th Precinct, identified by the investigation as PO Joseph Montano and PO Sean O'Neill, were also present at the scene. PO Montano arrested § 87(2)(b) on § 87(2)(b) (BR 02).

While § 87(2)(b) was being arrested, § 87(2)(b) requested his cell phone back. The officers told § 87(2)(b) that the phone could not be released to him at the scene, but that he could come to the 114th Precinct stationhouse later to retrieve it. § 87(2)(b) then followed the officers to their marked police vehicle as they escorted § 87(2)(b) to it.

In the course of telling § 87(2)(b) that he could not have his cell phone, Sgt. Albert pushed § 87(2)(b) backwards (**Allegation A**) and told him, "Move the fuck back" (**Allegation B**). Sgt. Albert also allegedly told § 87(2)(b) "You're not getting your fucking phone back" (**subsumed under Allegation B**).

As officers escorted § 87(2)(b) to a marked police vehicle for transport back to the 114th Precinct stationhouse, § 87(2)(b) followed them. Sgt. Albert again shoved § 87(2)(b) backwards (**subsumed under Allegation A**) and again told him, "Move the fuck back. You're not getting your fucking phone back" (**subsumed under Allegation B**).

As Sgt. Albert entered the front passenger side of the marked RMP, § 87(2)(b) asked why he was not getting his phone back, why he was pushed, and for Sgt. Albert's shield number. Sgt. Albert allegedly replied, "Fuck you," and made another profane comment, possibly "Fuck your mother" (**subsumed under Allegation B**), without providing his shield number to § 87(2)(b) (**Allegation C**). § 87(4-b) § 87(2)(g)

§ 87(2)(b) was not arrested and was not issued summonses.

Video footage of this incident was recorded by an unidentified individual, which captures a portion of the incident (BR 03 and 04):



2016-06-07_14-58-15.mp4

On June 6, 2016, this case was reassigned from Inv. Landino to Inv. Courage.

Mediation, Civil and Criminal Histories

- § 87(2)(b) accepted mediation by telephone and the case was forwarded to the Mediation Unit on March 10, 2016. On April 5, 2016, this case was returned from the Mediation Unit § 87(2)(b), rendering the case mediation unsuitable.
- On June 7, 2016, a Notice of Claim request was submitted to the Comptroller's office. The results will be added to the case file upon receipt (BR 05).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (BR 07).
- Sgt. Albert has been a member of the service for 22 years. There are six prior allegations against him stemming from four cases that occurred between 1997 and 2011, none of which were substantiated. § 87(2)(g)

Potential Issues

- On March 4, 2016, § 87(2)(b) provided a telephone statement (BR 08). Mediation was offered, which § 87(2)(b) accepted. On March 9, 2016, § 87(2)(b) provided a second telephone statement in which he clarified some portions of his prior telephone statement (BR 09). The case was then referred to mediation, but returned on April 5, 2016. Between April 5, 2016, and April 15, 2016, five calls were placed to § 87(2)(b) in an attempt to obtain an in-person statement from him. Each time voice messages were left with § 87(2)(b). In addition, on April 5, 2016, and April 11, 2016, two please-call letters, two emails, and two text messages were sent to § 87(2)(b). To date, § 87(2)(b) has not responded to these contact attempts.
- § 87(2)(b) obtained video footage of this incident, which he emailed to IAB (BR 03 and 04; see above file labeled 2016-06-07_14-58-15.mp4). In filing this complaint with IAB, § 87(2)(b) specified that the video was sent to him via Facebook, but did not indicate by whom. In his telephone statement from March 4, 2016, § 87(2)(b) could not identify any of the witnesses to this incident, but thought he could obtain that information at a future date. As was previously discussed, the investigation was not able to reach § 87(2)(b) after the case was returned from mediation. As such, the witnesses to this incident, and by extension the person who recorded the video footage, remain unidentified.

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g)

- § 87(2)(g)

Allegation A – Force: Sergeant Joseph Albert used physical force against § 87(2)(b)

Allegation B – Discourtesy: Sergeant Joseph Albert spoke discourteously to § 87(2)(b)

It is undisputed § 87(2)(b) was arrested while § 87(2)(b)'s cell phone was in his possession, and that officers consequently seized his cell phone. It is also undisputed that § 87(2)(b) was upset about the seizure of his cell phone, and followed officers to their marked police vehicle as they escorted § 87(2)(b) to it for transport. It is not disputed that Sgt. Albert pushed § 87(2)(b) away, and that at least some profanity was used towards him.

In his telephone statements (BR 08), § 87(2)(b) alleged that Sgt. Albert twice pushed him backwards by placing both hands on § 87(2)(b)'s chest as he attempted to retrieve his cell phone, first on the sidewalk where § 87(2)(b) was arrested and the second time in the street near the police vehicle to which § 87(2)(b) was escorted. The second time that Sgt. Albert pushed § 87(2)(b), § 87(2)(b) stumbled backwards by about three feet, accidentally striking his right hand against the driver-side mirror of a vehicle parked at the curb. This caused swelling to a finger on § 87(2)(b)'s right hand. Each time Sgt. Albert pushed him, he allegedly said, "Move the fuck back. You're not getting your fucking phone back." § 87(2)(b) further alleged that when he asked why he was pushed, why he was not getting his cell phone back, and asked for Sgt. Albert's shield number, Sgt. Albert replied, "Fuck you," and made a comment to the effect of, "Fuck your mother." § 87(2)(b) replied to Sgt. Albert, "Suck a dick."

As was discussed above, § 87(2)(b) did not ultimately cooperate with the investigation.

The video footage of this incident was recorded by an unidentified bystander on what appears to be a cell phone (BR 03 and 04; see above file labeled 2016-06-07_14-58-15.mp4). The bystander is standing on the sidewalk, along with an unknown number of other bystanders, one of whom, an unidentified female, is yelling, "Don't do that," and other comments throughout. § 87(2)(b) identifiable by his dark-colored cap, is standing in the street. He is facing the rear passenger side door of a marked police vehicle. There are three, or possibly four, police officers standing at the rear passenger door, which is in the process of being closed as the footage begins. § 87(2)(b) is standing within about one foot of the three or four police officers, and is close to the rear passenger door as it is closed, though it is impossible to tell from the positioning of the officers around the door if he makes contact with it. Once the rear passenger side door is closed, § 87(2)(b) then moves from the rear passenger side door closer to the front passenger side door of the vehicle with his right arm raised. An officer, identified by the investigation as Sgt. Albert, pushes § 87(2)(b) from § 87(2)(b)'s left side, causing § 87(2)(b) to stumble back, and says, "Get the fuck out of here."

Sgt. Albert then walks around the rear of the vehicle towards its driver side and is eclipsed from view. § 87(2)(b) says, "Let me get my phone." An officer standing at the front passenger door says, "No." § 87(2)(b) says, "I'm going to the police department." The officer at the front passenger door says, "Go ahead." An officer then makes a comment, possibly about the cell phone being found on an arrested person. § 87(2)(b) says, "It don't matter. It don't matter. I know how this shit works. Are you stupid?" At 00:20 seconds, an officer sits in the front passenger seat of the vehicle and it begins to drive away. At 00:22 seconds, a female individual is visible stepping from the sidewalk onto the street.

At 00:26 seconds, an officer, "I don't know that," in response to an unintelligible comment from § 87(2)(b). The officer then says, "Be my guest." At 00:28 seconds, § 87(2)(b) says, "What are you, tough? I'm not scared of y'all. I already got...[unintelligible]." At 00:38 seconds, the marked police van stops. § 87(2)(b) is standing at the passenger side at a distance of about one or two feet, in between the front seat and the rear passenger seat. At

00:41 seconds, Sgt. Albert emerges from around the rear of the vehicle at the passenger side and says, "Get out." At 00:44 seconds, Sgt. Albert pushes § 87(2)(b) backwards by placing his hands on the front of his chest. Sgt. Albert then enters the front seat of the vehicle. The same uniformed officer who had been standing at the passenger side of the vehicle then approaches § 87(2)(b) and repeats to him, "Get out of the way," while holding his hand extended forward to keep § 87(2)(b) back. The marked police vehicle then begins to move.

If any officer says "Fuck your mother," or, "Fuck you," this is not audible on the video footage.

Sgt. Albert (BR 11) said that as he and PO Montano placed § 87(2)(b) under arrest, § 87(2)(b) told Sgt. Albert that his phone was in § 87(2)(b)'s possession. Sgt. Albert told § 87(2)(b) that the phone could not be released to him because Sgt. Albert did not know to whom it belonged. § 87(2)(b) again asked for the phone and Sgt. Albert again said that he could not provide it. § 87(2)(b) became agitated when he learned he would not be getting his cell phone back.

As § 87(2)(b) was placed into the police vehicle, § 87(2)(b) positioned himself in front of the door through which § 87(2)(b) was entering the vehicle in order to get the phone. § 87(2)(b) did not actually reach into the vehicle, but was positioned in a fashion that prevented the door of the police vehicle from closing. Sgt. Albert had already by this time given § 87(2)(b) several orders in an authoritative voice to get back and to get away. Once § 87(2)(b) positioned himself by the door, Sgt. Albert pushed § 87(2)(b) away from the vehicle by placing his hands on § 87(2)(b)'s chest. Sgt. Albert did not know if § 87(2)(b) made contact with a vehicle as a result of being pushed. Sgt. Albert denied pushing § 87(2)(b) a second time. Sgt. Albert acknowledged that he may have used the word "fuck" while pushing § 87(2)(b) and telling him to get away, though he did not recall his exact phrasing. Sgt. Albert denied using the word "fuck" in any other context. Sgt. Albert denied telling § 87(2)(b) "You're not getting your fucking phone back," or, "fuck your mother," or, "fuck you."

§ 87(2)(b) began yelling profanities and became increasingly loud after he was pushed. Sgt. Albert then left the scene.

After reviewing the video footage, Sgt. Albert could not identify himself on the video footage as the officer who pushes § 87(2)(b) and says, "Get the fuck out of here." Sgt. Albert did identify himself as the officer who pushes § 87(2)(b) a second time at the police vehicle. Sgt. Albert explained that he pushed § 87(2)(b) in order to get into his police vehicle.

Sgt. Albert's partner, PO Hyman (BR 12), said that as officers were arresting § 87(2)(b) § 87(2)(b) told them that his cell phone was in § 87(2)(b)'s possession. The officers explained multiple times to § 87(2)(b) that he would need to go back to the 114th Precinct stationhouse to retrieve the cell phone. § 87(2)(b) followed the officers as they escorted § 87(2)(b) to the police vehicle, continuing to insist about the cell phone. PO Hyman, as well as other officers, repeatedly told § 87(2)(b) to keep his distance. § 87(2)(b) did not comply with these instructions.

As the officers reached the police vehicle and began placing § 87(2)(b) inside, § 87(2)(b) stood approximately two feet from the officers. PO Hyman could not recall if § 87(2)(b) attempted to reach inside the patrol vehicle, or otherwise made movements or gestures towards the officers. Sgt. Albert did push on § 87(2)(b)'s upper body area to keep him away from the scene, ordering him to "Get back." PO Hyman did not remember Sgt. Albert

using any profanity towards § 87(2)(b) PO Hyman did not remember Sgt. Albert pushing § 87(2)(b) a second time, and thought that immediately after the push all officers entered the vehicle and left.

PO Smith (BR 13), who was also working with PO Hyman and Sgt. Albert, closely corroborated their statements.

PO Montano (BR 14), who was also part of the Conditions team but working in a separate vehicle with his partner, PO Sean O'Neill, provided a statement that was generally consistent with that of PO Hyman, PO Smith, and Sgt. Albert.

Officers must use the minimum level of physical force necessary to overcome resistance. Patrol Guide Procedure 203-11 (BR 15) Officers are to be courteous and respectful in their interactions with the public. Patrol Guide Procedure 203-09 (BR 17) In certain stressful encounters, an officer may use limited profanity where the need to gain compliance or maintain control of an incident is present. NYPD v. Court, OATH Index 78667/03 (BR 16)

§ 87(2)(g)

§ 87(2)(g)

Video footage does show that § 87(2)(b) came very close to the police vehicle as § 87(2)(b) was being placed inside of it. Video footage begins only as the door to the police vehicle is closing, and does not depict whether or not § 87(2)(b) ever stood in such a fashion as to prevent officers from closing the rear passenger side door. § 87(2)(g)

§ 87(2)(b) by the point at which Sgt. Albert first pushes § 87(2)(b) on the video footage, the rear door of the marked police vehicle has been closed, decreasing the likelihood of § 87(2)(b) interfering with § 87(2)(b)

In addition, by the time Sgt. Albert pushes § 87(2)(b) the second time, § 87(2)(b) is still standing at the passenger side of the police vehicle, but does not appear to make any attempt to prevent Sgt. Albert from entering the police vehicle that would warrant such a push. After Sgt. Albert pushes § 87(2)(b) the second time, another officer approaches and keeps § 87(2)(b) held back by extending one arm forward, implying that it was not necessary for Sgt. Albert to shove § 87(2)(b) back forcefully to keep him at some remove from the police vehicle.

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: Sergeant Joseph Albert refused to provide his shield number to § 87(2)(b)

In his telephone statement (BR 08), § 87(2)(b) alleged that he asked for Sgt. Albert's shield number, and that as he was getting into the vehicle Sgt. Albert replied, "Fuck you," and, "Fuck your mother," never providing his shield number to § 87(2)(b).

Video footage ((BR 03 and 04; see above file labeled 2016-06-07_14-58-15.mp4) reflects that the situation described by § 87(2)(b) did not occur. It is not until 00:58 seconds, after Sgt. Albert, PO Hyman, and PO Smith have entered the marked police vehicle, with the doors closed, all windows rolled up, and the vehicle is in motion, albeit at a low rate of speed, that an unidentified female steps into the street from the sidewalk and says, "This one right here, I need your badge number, yo," while pointing at the passenger side of the marked police vehicle. § 87(2)(b) then begins pointing at the front passenger side window, following it as it gradually gains speed along the street, saying "You, you, you." The female also yells, "You, you, you." At 1:04 seconds, it sounds as though § 87(2)(b) yells, "Your mother sucks dick." The marked police vehicle then drives away. At no point does § 87(2)(b) himself request the officers' badge number. At no point does there appear to be any response whatsoever from the police vehicle.

Sgt. Albert (BR 11) did not recall being asked to provide his shield number. Sgt. Albert said that as he drove away from the scene, he could hear the civilians yelling, but there was so much yelling going on that he could not distinguish what was said.

PO Montano (BR 14), PO Smith (BR 13), and PO Hyman (BR 12) did not recall any civilians asking for the shield number of any officer.

Video footage establishes that Sgt. Albert was not asked to provide his shield number before he entered the police vehicle, nor does he appear on the video footage to acknowledge the request in any fashion. § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad:

| | | | |
|---------------|-----------------|-------|-------|
| Investigator: | _____ | _____ | _____ |
| | Signature | Print | Date |
| Squad Leader: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |
| Reviewer: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |